

IP 05-0015-CR 1 T/F USA v Goodpaster
Magistrate Kennard P. Foster

Signed on 06/13/06

NOT INTENDED FOR PUBLICATION IN PRINT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

USA,)	
)	
Plaintiff,)	
vs.)	
)	
GOODPASTER JR, VERNON,)	CAUSE NO. IP05-0015-CR-01-T/F
)	
Defendant.)	

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
vs.)	Cause No. IP 05-15-CR-01 (T/F)
)	
VERNON GOODPASTER,)	
)	
Defendant.)	

MAGISTRATE JUDGE’S REPORT AND RECOMMENDATION

This matter is before the undersigned U. S. Magistrate Judge pursuant to the Order entered by the Honorable John Daniel Tinder, Judge, on May 25, 2006, designating this Magistrate Judge to conduct a hearing on the Petition for Summons or Warrant for Offender Under Supervision filed with the Court on May 25, 2006, and to submit to Judge Tinder proposed Findings of Facts and Recommendations for disposition under Title 18 U.S.C. §3401(i) and 3583(e). All proceedings regarding this matter were held on June 13, 2006, in accordance with Rule 32.1 of the *Federal Rules of Criminal Procedure*. Mr. Goodpaster appeared in person with his appointed counsel, William Marsh, the Indiana Federal Community Defender’s Office. The government appeared by Donna Eide, Assistant United States Attorney and U. S. Parole and Probation appeared by Bob Akers, for Dwight Wharton, who participated in the proceedings.

The Court conducted the following procedures in accordance with Rule 32.1(a)(1) *Federal Rules of Criminal Procedure* and Title 18 U.S.C. §3583:

1. That William Marsh, the Indiana Federal Community Defender's Office, was present and appointed by the Court to represent Mr. Goodpaster in regard to the pending Petition for Revocation of Supervised Release.

2. A copy of the Petition for Revocation of Supervised Release, filed May 25, 2006, was provided to Mr. Goodpaster and his counsel who informed the Court that they had read and understood the specifications of the violations charged therein and waived further reading thereof.

3. Mr. Goodpaster was advised of his right to a preliminary hearing and its purpose in regard to the alleged specified violations of his supervised release contained in the pending Petition to Revoke Supervised Release.

4. That Mr. Goodpaster would have a right to question witnesses against him at the preliminary hearing unless the Court, for good cause shown, found that justice did not require the appearance of a witness or witnesses.

5. That Mr. Goodpaster had the opportunity to appear at the preliminary hearing and present evidence on his own behalf.

6. That if the preliminary hearing resulted in a finding of probable cause that Mr. Goodpaster had violated an alleged condition or conditions of his supervised release set forth in the Petition, he would be held for a revocation hearing before the undersigned Magistrate Judge, in accordance with Judge Tinder's designation entered on May 25, 2006.

7. Mr. Marsh stated that Mr. Goodpaster would stipulate there is a basis in fact to hold him on the violation of supervised release set forth in the Petition to Revoke Supervised Release, filed May 25, 2006. Mr. Goodpaster then signed a written waiver of preliminary examination.

8. Mr. Goodpaster, by counsel, stated that he did not oppose the Petition and would admit to the specified violations of his supervised release as set forth in the Petition for Warrant or Summons for an Offender Under Supervision, filed with the Court on May 25, 2006 as follows:

<u>Violation Number</u>	<u>Nature of Noncompliance</u>
1	The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, and shall observe the rules of that facility.
2	The defendant shall reside at the Volunteers of America Community Corrections center for up to 120 days, and shall observe the rules of that facility.

Mr. Goodpaster admitted urine specimens that tested positive for opiates on the following dates: 3/1/06; 3/4/06; 3/9/06; 3/10/06; and 3/21/06. He initially denied illegal usage of prescription medication, but later admitted he relapsed. The defendant's conditions were subsequently modified to include up to 120 days halfway house placement. (Please see Request for Modifying the Conditions of Supervision dated March 25, 2006.) Mr. Goodpaster surrendered to Volunteers of America (VOA) as ordered on April 6, 2006, and he submitted another urine specimen that tested positive for opiates. His next two specimens were negative for the presence of drugs and no action was taken by the Court. (Please see Report on Offender dated May 3, 2006.)

On May 11, 2006, Mr. Goodpaster submitted a second urine specimen at VOA that tested positive for opiates. When confronted about drug use, he readily admitted using someone else's prescription medication (i.e. Vicodin) and he signed an Admission Report to that effect. In addition, the defendant's case manager learned Mr. Goodpaster failed to undergo a mandatory physical and tuberculosis test as instructed. The defendant claimed he was not instructed by VOA staff to fulfill said obligation; however, VOA staff maintained he was provided specific instructions but went to work instead of reporting for the prescheduled physical. Mr. Goodpaster's ongoing drug use and his failure to undergo the required physical are both violations of facility rules. Per the Bureau of Prisons' policy, his residency was terminated effective May 18, 2006.

Counsel for the parties further stipulated the following:

- 1) Mr. Goodpaster has a relevant criminal history category of I. *See, U.S.S.G. §7B1.4(a).*
- 2) The most serious grade of violation committed by Mr. Goodpaster constitutes a Grade B violation, pursuant to U.S.S.G. §7B1.1(b).
- 3) Pursuant to U.S.S.G. §7B1.4(a) upon revocation of supervised release, the range of imprisonment applicable to Mr. Goodpaster is 4-10 months.
- 4) The appropriate disposition of Mr. Goodpaster's supervised release upon hearing before the Court is to modify his supervised release as follows:
 - i. Mr. Goodpaster's supervised release conditions be modified to add the additional condition that he reside for up to 180 days at the Indianapolis Community Corrections Center, namely, the Volunteers of America, in accordance with its rules and regulations, when designated by the Bureau of Prisons. Mr. Goodpaster will then continue on supervised release under the previously-ordered conditions of supervised release entered by the Court.

The Court then inquired directly of Mr. Goodpaster while under oath whether he admitted the violations stipulated to above. Mr. Goodpaster admitted to the violations. The Court, having heard the admissions of the defendant, the stipulations of the parties, and the arguments and discussions on behalf of each party, **NOW FINDS** that the defendant violated the above-delineated conditions of his supervised release. The defendant's supervised release is therefore **MODIFIED** and Vernon Goodpaster's supervised release shall continue as previously set with the following modifications:

- (1) He shall reside at the Indianapolis Community Corrections Center, namely, the Volunteers of America, in accordance with its rules and regulations, when designated by the Bureau of Prisons for a period of up to 180 days. Mr. Goodpaster shall then continue on supervised release under the previously-ordered conditions of supervised release entered by the Court.

WHEREFORE, Mr. Goodpaster's supervised release is **MODIFIED** as set forth above.

Counsel for the parties and Mr. Goodpaster stipulated in open Court waiver of the following:

1. Notice of the filing of the Magistrate Judge's Report and Recommendation;
2. Objection to the Report and Recommendation fo the undersigned Magistrate Judge pursuant to Title 28 U.S.C. §636(b)(1)(B); Rule 72.b, *Federal Rules of Civil Procedure*, and S.D.Ind.L.R.72.1(d)(2), *Local Rules of the U. S. District Court for the Southern District of Indiana*.

WHEREFORE, the U. S. Magistrate Judge **RECOMMENDS** the Court adopt the above report and recommendation modifying Mr. Goodpaster's supervised release.

IT IS SO RECOMMENDED this 13th day of June, 2006.

Kennard P. Foster, Magistrate Judge
United States District Court
Southern District of Indiana

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